

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  AT&T COMMUNICATIONS OF THE MIDWEST, INC.  Respondent.	DOCKET NO. FCU-04-58
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
ASSIGNING TO ADMINISTRATIVE LAW JUDGE**

(Issued December 3, 2004)

On November 22, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition asking that the Board review the proposed resolution issued in Docket No. C-04-211, involving AT&T Communications of the Midwest, Inc. (AT&T), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." On November 24, 2004, AT&T also filed with the Board a request for formal complaint proceedings, asking that the Board review the proposed ruling and find that no slam occurred.

Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On September 10, 2004, Laura Ilcisin of Omaha, Nebraska, submitted a complaint to the Board on behalf of her parents, Arlene and Joseph Reinig of Portsmouth, Iowa, alleging that AT&T changed the Reinigs' long distance telephone service without authorization. A letter from Ms. Ilcison to AT&T, a copy of which was attached to the complaint, noted that the rate AT&T charged for long distance calls was three times higher than what the Reinigs' preferred carrier would have charged.

Board staff identified the matter as C-04-211 and, pursuant to Board rules, on September 13, 2004, forwarded the complaint to AT&T for response within ten days. AT&T filed a response with the Board by e-mail on September 22, 2004, stating that AT&T's records showed that the Reinigs' long distance service was changed to AT&T as the result of a telemarketing effort on March 16, 2004. AT&T stated that the third-party verification indicates that Arlene Reinig authorized the change in service and provided her month and date of birth to the verifier. AT&T included an audio recording of the verification with its response. AT&T also noted that the customer was sent written notification of the change in service, including the applicable charges and fees and AT&T's toll-free number for customer inquiries, and was removed from AT&T's long distance service on August 9, 2004. AT&T stated that it had suspended collection activity on the disputed charges totaling \$59.69, but had not reimbursed any account changing fees because there was no evidence of an

unauthorized switch. Board staff forwarded a copy of AT&T's response and the third-party verification recording to Ms. Ilcisin for her review.

On September 27, 2004, Board staff contacted AT&T by e-mail and requested an explanation of the telemarketer's statement on the verification recording about crediting charges. Board staff repeated this request for an explanation of the telemarketer's statement several times but did not receive a responsive answer from AT&T.

On November 10, 2004, Board staff issued a proposed resolution concluding that AT&T had not provided acceptable proof of authorization. Board staff reviewed the verification recording, which included a statement by the telemarketer instructing the customer to give the verifier "yes" answers only so that the telemarketer could have unspecified charges "dropped off" the customer's bill. Board staff concluded that it was inappropriate for the telemarketer to instruct the customer to answer "yes" to the verifier's questions and that this instruction raised the question of whether the telemarketer used coercive means that resulted in the customer completing the verification process. Board staff noted that because AT&T never responded to staff's questions about the telemarketer's statement about dropping charges, the decision was based on the information contained in the file. Board staff concluded that given the unanswered questions surrounding the circumstances at the time of the verification recording, the recording is insufficient proof of authorization and that slamming occurred in this matter.

In its November 22, 2004, petition, Consumer Advocate asserts that the proposed resolution should be augmented with a civil penalty because a customer credit alone will not stop the unlawful practice of slamming and that civil penalties are necessary to ensure compliance and deter future violations.

In its November 24, 2004, request for formal complaint proceedings, AT&T states that it complied with Iowa law regarding changing a customer's service provider. AT&T states that it was not able to respond to staff's inquiries about the telemarketer's statements because of personnel changes in AT&T's slam resolution center. AT&T requests that Board staff permit AT&T to determine if it has additional evidence in support of its position and that staff modify the proposed resolution to find that no slamming occurred. Alternatively, AT&T requests that the Board reject the proposed resolution if it is not modified or initiate a formal proceeding whereby AT&T can put relevant law and evidence into the record.

The Board has reviewed the record to date. Both Consumer Advocate and AT&T have requested the Board to docket this matter for formal proceeding. The Board finds that reasonable grounds exist for further investigation of this matter, particularly in light of the telemarketer's statement on the verification recording instructing the customer to answer "yes" to the verifiers questions so that unspecified charges could be dropped. The Board will docket this matter for formal proceeding and will assign the docket to an administrative law judge for further proceedings pursuant to Iowa Code § 17A.11(1)"b" (2003) and 199 IAC 7.1(4). The ALJ will take

all appropriate action, which may include, among other things, setting a hearing date, presiding at the hearing, and issuing a proposed decision.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on November 22, 2004, and the "Request for Formal Complaint Proceedings" filed by AT&T Communications of the Midwest, Inc., on November 24, 2004, are granted. File C-04-211 is docketed for formal proceeding, identified as Docket No. FCU-04-58.

2. Pursuant to Iowa Code § 17A.11(1)"b" and 199 IAC 7.1(4), this docket is assigned to the Board's administrative law judge, Amy Christensen, who will take all appropriate action, which may include, among other things, setting a hearing date, presiding at the hearing, and issuing a proposed decision. The administrative law judge shall have the authority provided under 199 IAC 7.1(4)"a" through "j."

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3<sup>rd</sup> day of December 2004.